

**PT 99-23**

**Tax Type: PROPERTY TAX**

**Issue: Religious Ownership/Use**

**STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
CHICAGO, ILLINOIS**

**LIVING LORD  
LUTHERAN CHURCH  
OF BARTLETT,  
APPLICANT**

**v.**

**ILLINOIS DEPARTMENT  
OF REVENUE**

**No. 96-22-216**

**Real Estate Tax Exemption for  
1996 Assessment Year**

**P.I.N: 01-09-205-031**

**DuPage County Parcel**

**Alan I. Marcus  
Administrative Law Judge**

**RECOMMENDATION FOR DISPOSITION**

**APPEARANCE:** Mr. Robert G. Rybica, Assistant State's Attorney for the County of DuPage, on behalf of the DuPage County Review.

**SYNOPSIS:** This proceeding raises the issue of whether real estate identified by DuPage County Parcel Index Number 01-09-205-031 (hereinafter the "subject property") qualifies for exemption from 1996 real estate taxes under 35 ILCS 200/15-40, wherein "[a]ll property used exclusively for religious purposes" is exempted from real estate taxation.

The controversy arises as follows:

On July 15, 1996, Living Lord Lutheran Church (hereinafter the "applicant") filed a Real Estate Tax Exemption Complaint with the DuPage County Board of Review (hereinafter the "Board"). Dept. Group. Ex. No. 1, Doc. A. The Board reviewed applicant's complaint and

subsequently recommended to the Illinois Department of Revenue (hereinafter the "Department") that the requested exemption be granted.

The Department rejected the Board's recommendation in a determination dated January 30, 1997. This determination found that the subject property was not in exempt use during 1996. Dept. Ex. No. 2 Applicant filed a timely request for hearing as to this denial on February 17, 1997 (Dept. Ex. No. 3) and later presented evidence at a formal evidentiary hearing. Following submission of all evidence and a careful review of the record, it is recommended that the Department's determination be affirmed.

**FINDINGS OF FACT:**

1. The Department's jurisdiction over this matter and its position therein are established by the admission into evidence of Dept. Gr. Ex. No. 1 and Dept Ex. No. 2.
2. The Department's position in this case is that the subject property was not in exempt used during 1996. Dept. Ex. No. 2.
3. Applicant is affiliated with the Evangelical Lutheran Church in America. Its organizational purposes are to promote the Christian faith, teach Scripture, worship G-D and provide an "outpost for caring for the poor". Tr. pp. 9, 11.
4. Applicant concentrates its ministry in the community of Bartlett, Illinois and its surrounding area. Tr. p. 11.
5. The subject property is located at 1044 Congress Drive, Bartlett, IL 60103 and is immediately adjacent to applicant's church. Dept. Group Ex. No. 1, Docs B, C; Applicant Ex. No. 2.

6. Applicant's church was exempt from real estate taxes throughout the 1996 assessment year. Dept. Group Ex. No. 1, Doc. C.
7. Applicant obtained ownership of the subject property via a Deed in Trust dated May 11, 1995. This acquisition was part of a major construction project wherein applicant planned to build an additional or "new" church facility, extra parking space, a water retention area, and egress onto the nearby Highway 59. Applicant Ex. Nos. 1; 3-A; Tr. pp. 10, 15-17.
8. Applicant began searching for an architect immediately after acquiring the subject property and hired Jager Nickola Associates, Ltd. of Park Ridge in November of 1995. It then took the following steps to bring its plans into fruition:

<b>YEAR<sup>1</sup></b>	<b>ACTIVITY</b>
1996	<ul style="list-style-type: none"> <li>• Began design inquiry process by holding a series of congregational meetings that addressed space needs and other related concerns;</li> <li>• Met with architect on a regular basis;</li> <li>• Held monthly building committee meetings;</li> <li>• Conducted a series of meetings with representatives from the Illinois Department of Transportation to address egress problems;</li> <li>• Planned fundraising campaign;</li> <li>• Received floor plan from architect (September, 1996) and began the process of obtaining approval for that plan;</li> <li>• Cleaned up debris on subject property</li> </ul>

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1. The findings of fact in this chart are based on the testimony of applicant's senior pastor, the Rev. Kenneth Soderland, whom, for the most part, did not specify exact time frames (dates, months, etc.) when the activities in question took place. Those time frames he did specify are shown in parentheses.

<b>YEAR (Cont'd)</b>	<b>ACTIVITY</b>
<b>1997</b>	<ul style="list-style-type: none"> <li>• Continued with and completed design approval process;</li> <li>• Completed soil testing;</li> <li>• Undertook fundraising campaign</li> </ul>
<b>1998</b>	<ul style="list-style-type: none"> <li>• Broke ground (May, 1998);</li> <li>• Continued with actual construction of "new" church and other improvements</li> </ul>
<b>1999 (Projected)</b>	<ul style="list-style-type: none"> <li>• Anticipate that construction will be completed;</li> <li>• Expect to receive Certificate of Occupancy (June)</li> </ul>

Applicant Ex. No. 4; Tr. pp. 10-11, 20-27.

#### **CONCLUSIONS OF LAW:**

An examination of the record establishes that this applicant has not demonstrated, by the presentation of testimony or through exhibits or argument, evidence sufficient to warrant the subject property from 1996 real estate taxes. Accordingly, under the reasoning given below, I recommend that the Department's original determination in this matter be affirmed. In support thereof, I make the following conclusions:

Article IX, Section 6 of the Illinois Constitution of 1970 provides as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

The power of the General Assembly granted by the Illinois Constitution operates as a limit on the power of the General Assembly to exempt property from taxation. The General Assembly may not broaden or enlarge the tax exemptions permitted by the Constitution or grant

exemptions other than those authorized by the Constitution. Board of Certified Safety Professionals, Inc. v. Johnson, 112 Ill. 2d 542 (1986). Furthermore, Article IX, Section 6 is not a self-executing provision. Rather, it merely grants authority to the General Assembly to confer tax exemptions within the limitations imposed by the Constitution. Locust Grove Cemetery Association of Philo, Illinois v. Rose, 16 Ill. 2d 132 (1959). Moreover, the General Assembly is not constitutionally required to exempt any property from taxation and may place restrictions or limitations on those exemptions it chooses to grant. Village of Oak Park v. Rosewell, 115 Ill. App. 3d 497 (1st Dist. 1983).

Pursuant to its Constitutional mandate, the General Assembly enacted the Property Tax Code (35 ILCS 200/1-3 *et seq.*). The provisions of the Code which govern disposition of the instant proceeding are found in section 15-40, wherein "[a]ll property used exclusively for religious purposes" is exempted from real estate taxation. 35 ILCS 200/15-40.

Applicant bears the burden of proving that its property falls within the appropriate statutory exemption by clear and convincing evidence. Metropolitan Sanitary District of Greater Chicago v. Rosewell, 133 Ill. App. 3d 153 (1st Dist. 1985)). Furthermore, the following rules of statutory construction and interpretation apply in all property tax exemption cases: (1) a statute exempting property or an entity from taxation must be strictly construed against exemption, with all facts construed and debatable questions resolved in favor of taxation (People ex rel. Nordland v. Home for the Aged, 40 Ill. 2d 91 (1968), Gas Research Institute v. Department of Revenue, 154 Ill. App. 3d 430 (1st Dist. 1987)); and, (2) the word "exclusively" when used in section 200/15-40 and other exemption statutes means "the primary purpose for which property is used and not any secondary or incidental purpose" (Pontiac Lodge No. 294, A.F. and A.M. v. Department of Revenue, 243 Ill. App. 3d 186 (4th Dist. 1993)).

Prior to 1909, it was a requirement for the exemption of property used for religious purposes that it be owned by the organization that claimed the exemption. Since that time however, a statutory amendment eliminated that requirement in cases that do not involve parsonages. The determinative test of exemption then became use and not ownership. People ex rel. Bracher v. Salvation Army, 305 Ill. 545 (1922). *See also*, American Nat'l Bank and Trust Co. v. Dep't of Revenue, 242 Ill. App. 3d 716 (2nd Dist. 1993).

In People ex rel. McCullough v. Deutsche Evangelisch Lutherisch Jehova Gemeinde Ungeanderter Augsburgischer Confession, 249 Ill. 132, 136-137, (1911), (hereinafter "McCullough"), the Illinois Supreme Court defined the term "religious use" as follows:

As applied to the uses of property, a religious purpose means a use of such property by a religious society or persons as a stated place for public worship, Sunday schools and religious instruction.

Applicant's actual use determines whether the property in question is used for an exempt purpose. Skil Corporation v. Korzen, 32 Ill. 2d 249 (1965); Comprehensive Training and Development Corporation v. County of Jackson, 261 Ill. App. 3d 37 (5th Dist. 1994). Furthermore, adapting and developing a property for an eventual exempt use can be sufficient to satisfy the actual use requirement. Weslin Properties v. Department of Revenue, 157 Ill. App. 3d 580 (2nd Dist. 1987).

Based on the fact that applicant is actively involved in carrying out a Christian ministry, I conclude that applicant practices a "religion" as that word is defined by Illinois case law.<sup>2</sup> I further conclude that, during 1996, applicant undertook a series of preliminary steps in furtherance of a project which eventually would cause the subject property to be "used exclusively for religious purposes" through construction of a "new" church and related improvements.

These steps were, however, distinguishable from those taken in Weslin Properties, *supra*, wherein the appellant began to make physical adaptations to the property in question via construction of berms. Here, applicant did not begin making such adaptations until 1997, when it began the process of soil testing. Moreover, applicant did not break ground on the entire construction project until May of 1998.

In addition, business reality dictates that applicant could not have actually implemented even the beginnings of project as complex as the one described in Rev. Soderland's testimony without appropriate financing. Applicant did plan a fundraising drive during 1996. However, it did not *actually begin* the process of raising necessary funds until the ensuing year. Based on this and all the above considerations, I conclude that applicant merely intended to

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2 . That definition, originally articulated in McCullough, is as follows:

while religion, in its broadest sense, includes all forms and phases of belief in the existence of superior beings capable of exercising power over the human race, yet in the common understanding and in its application to the people of this State it means the formal recognition of G-D as members of societies and associations.

McCullough, *supra* at 136.

develop the property for exempt use during 1996.

Such mere intent is legally insufficient to sustain applicant's burden of proof. Weslin Properties, *supra*. Even if this were not the case, Rev. Soderland's testimony contains numerous factual omissions as to the dates on which applicant undertook various phases of its project. These omissions are particularly egregious for the 1996 tax year, wherein the only specific information given was the month in which applicant received a floor plan from its architect.

The rules governing applicant's burden of proof cited *supra*, at p. 5, mandate that applicant is solely responsible for curing the aforementioned evidentiary deficiencies. Neither Rev. Soderland's testimony nor the remaining evidence of record contain enough information to remedy these insufficiencies. Consequently, applicant has failed to clearly and convincingly prove that the subject property was being adopted and developed for exempt use during the 1996 tax year. Therefore, the Department's determination denying the subject property exemption from 1996 real estate taxes due to lack of exempt use should be affirmed.

WHEREFORE, for all the above-stated reasons, it is my recommendation that real estate identified by DuPage County Parcel Index Number 01-09-205-031 not be exempt from 1996 real estate taxes.

June 24, 1999

Date

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Alan I. Marcus  
Administrative Law Judge